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16
17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF SANTA CRUZ
19

20 COUNTY OF SANTA CRUZ and CITY OF
SANTA CRUZ

21 Plaintiffs/Petitioners,

22 v.

23 CALIFORNIA DEPARTMENT OF FOOD
24 AND AGRICULTURE; A.G. KAWAMURA, in
his official capacity as Secretary of the
25 California Department of Food and Agriculture;
26 and DOES 1 through 100, inclusive,

27 Defendants/Respondents.
28

Case No. 158516

**PETITIONERS' REPLY BRIEF IN
SUPPORT OF THEIR PETITION FOR
WRIT OF MANDATE**

Date: April 24, 2008

Time: 8:30 a.m.

Dept: 8

INTRODUCTION

After reviewing Respondents' Opposition Brief, it is clear that the exemptions CDFA asserted in its Notice of Exemption ("NOE") are invalid and that CDFA is violating CEQA. Surprisingly, CDFA *does not even discuss* the categorical exemption, and by its silence concedes that the exemption does not apply to this case.

As for the emergency exemption, no substantial evidence supports CDFA's position. In order to invoke the emergency exemption, CDFA is required to show substantial evidence of a "sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action." (Public Resources Code ("PRC"), § 21060.3.) The administrative record lacks any substantial evidence that the Light Brown Apple Moth ("LBAM") infestation in 2007 was a sudden and unexpected occurrence, that it involves a clear and imminent danger, or that it demands immediate action. CDFA does not dispute that the LBAM has been arriving on United States shores for years or that an LBAM infestation was "highly expected" over ten years ago. While it is undisputed that the LBAM infestation poses a *potential* economic threat to California and its farmers, CDFA provides no legal basis for claiming that such a purely economic threat constitutes a clear and imminent danger within the context of CEQA, especially where, almost two years after they were first trapped in Berkeley, there is still no recorded damage related to the pest. Although CDFA blithely claims that the LBAM infestation requires immediate action, it fails to explain how aerial spraying in June 2008 is an immediate response to an infestation that was identified, at the very latest, in February 2007.

CDFA's reliance on the Light Brown Apple Moth Act of 2007 to justify its actions is particularly troubling, as it ignores both the plain language and the legislative history of the Act. If anything, these indicate that the Legislature actually *wants* CDFA to comply with CEQA.

Based on this record, the *Western Municipal Water District* court, the *Castaic Lake* court, and the *Los Osos Valley Associates* court would strike down the NOE and order CDFA to comply with CEQA. Petitioners respectfully request that this Court do the same, and require CDFA to complete the EIR process before continuing its long-term program of aerially spraying pesticides over urban populations.

1 **ARGUMENT**

2 **A. Use Of The Categorical Exemption Is A Complete Sham**

3 CDFA's NOE relies on the Class 8 "environmental" categorical exemption, which consists of
4 actions taken by regulatory agencies to "assure the maintenance, restoration, enhancement, or
5 protection of the environment where the regulatory process involves procedures for protection of the
6 environment." (CCR, tit. 14, § 15308.) The "relaxation of standards allowing environmental
7 degradation [is] not included in this exemption." (*Id.*)

8 CDFA does not even make an attempt in the Opposition to justify the use of the categorical
9 exemption. This makes sense in light of CDFA's concession that an EIR is being prepared for the
10 eradication program. (Opp. at 12:5-12.) Of course, if an EIR is being prepared, CDFA recognizes
11 that its aerial spray program will have significant unmitigated impacts to the environment, making a
12 categorical exemption inapplicable (the question of why CDFA waited so long to start the EIR
13 process given the alleged "emergency" at issue is an important one, and left unanswered). Overall,
14 CDFA's reliance on the categorical exemption is simply unsupportable.

15 **B. The LBAM Infestation Was Not A Sudden And Unexpected Occurrence**

16 In order for CDFA to validly rely on the emergency exemption, the administrative record
17 must contain substantial evidence of every element of the exemption. (*Western Mun. Water Dist.,*
18 *etc. v. Sup. Court* (1986) 187 Cal.App.3rd 1104, 1113.) Here, that means that CDFA must show that
19 the LBAM infestation was a "sudden, unexpected occurrence, involving a clear and imminent
20 danger, demanding immediate action." (PRC, § 21060.3.)

21 Rather than rely on substantive evidence showing the *factual existence* of a sudden and
22 unexpected occurrence, CDFA argues that an emergency was created by the discovery in February
23 2007 that the moths captured "in the wild" of Berkeley in 2006 were LBAMs. (Opp. at 8:13-27.)
24 First, the fact that CDFA did not recognize the existence of the LBAM until 2007 does not mean that
25 it "suddenly" arrived in 2007. There is no substantial evidence in the record at all concerning when
26 the LBAM began living and breeding in California. Second, CDFA argues that the discovery was
27 "sudden" but ignores the required element that the occurrence be *unexpected* as well. There is
28 absolutely no substantial evidence establishing that the LBAM infestation was unexpected. On the

1 contrary, everyone agrees that it has been “highly expected” since 1995, and that it has been arriving
2 on California shores since 1984. (AR 145, 149.)¹

3 Getting past the issue of “sudden and unexpected,” where is the “occurrence” here? An on-
4 going insect infestation, involving the breeding and movement of living organisms, is a condition, a
5 situation, a status; it is not an occurrence. Inexplicably, CDFA does not even address the cases of
6 *Western Municipal Water District v. Superior Court* (1986) 187 Cal.App.3rd 1104, *Castaic Lake*
7 *Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, or *Los Osos Valley Associates v.*
8 *City of San Luis Obispo* (1994) 30 Cal.App.4th 1670, cases which solidly support the idea that the
9 LBAM infestation is not an “occurrence” to which the emergency exemption applies. CDFA cannot
10 evade the importance and applicability of these cases by simply ignoring them and pretending that
11 they do not exist.

12 CDFA’s misplaced reliance on *CalBeach Advocates v. City of Solana Beach* (2002) 103
13 Cal.App.4th 529 only underscores the fact that the emergency exemption does not apply here. In
14 *CalBeach*, the threatened “occurrence” was a bluff that was ready to collapse. This event was
15 prevented by the immediate construction of a wall. What bluff is in danger of immediate collapse
16 here? Fourteen months have gone by since the discovery of the LBAM with no reported damage.
17 The *CalBeach* court’s analysis of the semantic differences between an “occurrence” and a
18 “condition” does not help CDFA, because under any reasonable analysis, it is beyond dispute that
19 there is no “occurrence” in this case. Under any interpretation, the LBAM infestation does not
20 qualify as a sudden, unexpected occurrence to which the emergency exemption applies.

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23 ¹ The evidentiary citations CDFA cites do not constitute substantial evidence for the arguments it makes on this issue.
24 For example, at page 1:20-21, CDFA cites AR 150 for the proposition that the moths detected in Berkeley were “the first
25 of this moth species detected in the wild in the continental United States.” In fact, AR 150 states: “no occurrences of *E.*
26 *postvittana* [LBAM] have been *reported* in the wild in the US [emphasis added].” There is a vast difference between
27 CDFA’s statement that “no moths have been detected” (implying that they therefore did not exist here) and the actual
28 statement that no moths had been *reported* as of 2003. Similarly, at page 1, footnote 2 and page 8:7-12, CDFA cites AR
136-139 and 149-150 for the proposition that the “screening process at the U.S. ports appears to have prevented the
LBAM from becoming established in the wild prior to 2007” and that “government officials prevented the light brown
apple moth from entering the county.” Again, the actual evidentiary citations do not support these statements from a
factual perspective. AR 136-139 consists of an LBAM procedure manual for USA Citrus exports and contains no
evaluation, scientific or otherwise, of the effectiveness of the screening process.

1 C. A Speculative, Purely Economic Threat Does Not Constitute A Clear And
2 Imminent Threat Under CEQA

3 Petitioners do not dispute that the LBAM poses a potential economic threat to California.
4 However, the record indicates that this threat is almost entirely related to the potential impacts on
5 United States exports due to the negative reactions of United States trading partners. The question is
6 whether such a long-term economic threat justifies exercise of a CEQA emergency exemption that
7 must be narrowly construed. (*Western Municipal Water Dist., etc. v. Superior Court, supra*, 187
8 Cal.App.3rd at 1112.)

9 There is no substantial evidence in the record showing that the LBAM has actually damaged
10 any property at all in California since it was discovered in February 2007.² Lacking any specific
11 evidence of damage from the infestation, the record does not and cannot show substantial evidence
12 of “imminent danger to . . . property” in order to justify use of the emergency exemption. (PRC, §
13 21060.3.) In this regard, CEQA Guideline section 15269(c) is clear that the emergency exemption
14 was not meant to include long-term projects undertaken for preventing or mitigating a situation that
15 has a low probability of occurrence in the short-term. The administrative record shows no evidence
16 of property damage from February through October 2007. None has been reported to date. How
17 then can CDFA argue that damage from the LBAM is imminent or will occur in the short-term?
18 While it is true that officials need not watch and wait until a catastrophe unfolds before taking
19 emergency action, there must at least be evidence that the project is necessary to avert the
20 catastrophe (*see, e.g., CalBeach Advocates v. City of Solana Beach, supra*). However, given the
21 absence of any evidence of property damage in the administrative record, much less substantial
22

23
24 ² Again, CDFA’s citations to the record on this point do not help it. In terms of the non-economic potential threat
25 caused by LBAM, CDFA’s brief states at 4:16-19: “. . . [I]t is quite important to note that the light brown apple moth
26 threatens to cause direct damage to the natural environment through the increased use of pesticides by commercial and
27 residential growers, and by feeding on native and threatened plants. (AR 000121).” AR 121 actually contains a quite
28 different statement: “Establishment of this moth **could** cause direct environmental damage via increased pesticide use
state-wide by commercial and residential growers and via adverse feeding impacts on native plants. Populations of
threatened and endangered species **could** be severely threatened or extirpated should this moth adapt to feeding on them”
(emphasis added.) These statements do not support the idea that there is an imminent threat from the LBAM – they are
by their very nature speculative and conclusory and do not constitute substantial evidence pursuant to CEQA.

1 evidence that such damage will occur in the short-term unless aerial spraying takes place, CDFA
2 cannot meet that burden here.

3 **D. The Continued Aerial Spraying Program Is Not “An Immediate Action”**

4 The emergency exemption only applies to those occurrences requiring “immediate action” to
5 prevent harm. (PRC, § 21060.3) CDFA was on loose footing in arguing that the spraying in
6 November 2007, nine months after the moth was discovered in Berkeley, constituted an “immediate
7 action” to which the emergency exemption applied. To argue that aerial spraying set to take place in
8 June 2008 is “immediate action” to combat the February 2007 discovery borders on absurd. The
9 emergency exemption cannot be applicable to annual or other repetitive spraying a year or more
10 after the discovery of the infestation and still be considered an immediate response. This is exactly
11 the type of logic that the court in *Western Municipal Water District v. Superior Court, supra*, decried
12 as creating a hole in CEQA of fathomless depth. (187 Cal.App.3rd at 1111.) Such an interpretation
13 would be contrary to the policy of construing CEQA to afford the maximum possible protection to
14 the environment. (*Id.*) In *CalBeach Advocates, supra*, the imminent collapse of the bluff, the danger
15 of which was the potential loss of human life, was prevented by the immediate construction of a
16 wall. (103 Cal.App.4th 533-534.) Here, CDFA estimates that the wall (the eradication of the LBAM)
17 will take approximately four years, assuming CDFA’s efforts are successful. (AR 1052, 1221-1223.)
18 What wall takes four years to build to prevent immediate harm from occurring? Put simply, the
19 aerial spraying of urban populations for four years does not constitute an “immediate action” exempt
20 from CEQA review.

21 **E. The Light Brown Apple Moth Act of 2007 Does Not Support CDFA’s Use Of**
22 **The Emergency Exemption**

23 CDFA claims that the Legislature has already determined, via enactment of the Light Brown
24 Apple Moth Act of 2007 (“the Act”), that a “clear and imminent threat” exists sufficient to satisfy
25 that portion of the CEQA definition of an emergency. CDFA ignores that the Legislature’s
26 “imminent threat” findings were necessary in order to provide immediate funding for the LBAM
27 program and to ensure that the Act would take effect immediately. (*See Cal. Const.*, art 4, § 8(d)
28 [“Urgency statutes are those necessary for immediate preservation of the public peace, health, and

1 safety. A statement of facts constituting the necessity shall be set forth in one section of the bill.”.)
2 As explained below, the legislative history of the Act demonstrates that these findings did not give
3 CDFA authority to violate CEQA.

4 Typically, statutory exemptions to CEQA are clear and unambiguous. Projects that the
5 Legislature has determined to be exempt are found either in the statute itself, or in places other than
6 the Public Resources Code. (*See, e.g.*, PRC, § 21080(b), 21080.01-21080.08, 21090.8-20080.33;
7 CEQA Guidelines, 15260-15285; *Sagaser v. McCarthy* (1986) 176 Cal.App.3rd 288, 301 [legislature
8 specifically exempted construction of prison from CEQA review].) Here, the Legislature could have
9 expressly exempted CDFA’s eradication program from CEQA, but it chose not to.

10 The Senate Bill that proposed this legislation was amended several times before it was
11 passed. The June 21, 2007 amendments included a provision that “During the first 36 months of the
12 operation of the Light Brown Apple Moth Program the department’s actions pursuant to this act
13 shall be deemed an emergency response for the benefit of the environment under Division 13
14 (commencing with Section 21000) of the Public Resources Code. During this period, the department
15 shall complete the statutorily required environmental documentation.” (*See* Declaration of Jason M.
16 Heath, [submitted with the October 2007 papers supporting Petitioners’ request for temporary
17 restraining order], Exh. E, p. 5 [proposed section 6050.1(d)].)³ By the September 4, 2007
18 amendment the time limit had been dropped from 36 months to 24 months and was ultimately
19 amended out of the proposed statute altogether. (Exh. A, pp. 9, 12 [proposed section 6050.1(d)].) By
20 the time the Act was passed and Chaptered, the above language had been replaced entirely with the
21 following: “Eradication activities undertaken pursuant to this article **shall comply with all**
22 **applicable laws and regulations and shall be conducted in an environmentally responsible**
23 **manner.”** (Exh. A, p. 15 [final version of Light Brown Apple Moth Act, Food and Agriculture Code
24 section 6050.1(c)(2)(C)] [emphasis added].)

25
26
27
28 ³ Petitioners request that the Court take judicial notice of these legislative history documents under Evidence Code
sections 452, subdivisions (d), (g), and (h). For ease of reference, copies of the relevant legislative history documents are
attached to this brief as Exhibit A.

1 In other words, *the Legislature had an opportunity to exempt CDFA statutorily from CEQA*
2 *and purposely chose not to do so.* CDFA cannot legitimately argue that the Legislature has
3 sanctioned its evasion of CEQA. The Legislature specifically commanded that CDFA comply with
4 all applicable laws and that the LBAM eradication program be conducted in an environmentally
5 responsible manner; this indicates the Legislature's desire for full CEQA review of projects
6 undertaken to eradicate the LBAM.

7 Relying upon *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 775,
8 CDFA asks the Court to ignore the legislative history and instead focus on the plain wording of the
9 statute. However, the plain wording of the statute does not aid CDFA, it supports Petitioners. The
10 plain wording of the statute says that CDFA shall comply with all applicable laws. CEQA is an
11 applicable law. CDFA cannot rely on half of the plain wording of the statute to support its position,
12 while ignoring the other half. Furthermore, the Act is silent on the issue of CEQA compliance,
13 which makes the statute ambiguous on this issue and allows for examination of the legislative
14 history. The very fact that the parties are arguing about the meaning of the wording in the statute is
15 an indication that it is ambiguous and that the legislative history is helpful. It is well established that
16 when a statute is ambiguous the court may consider evidence of the Legislature's intent beyond the
17 words of the statute (as recognized by the *Hughes* court). (*Id.* at 776.) Once one reviews the
18 legislative history, there is no reasonable explanation for why the Legislature deleted the express
19 CEQA exemption other than that the Legislature intended that CDFA comply with CEQA. Overall,
20 the Act supports Petitioners' position that CDFA cannot evade CEQA by relying on the emergency
21 exemption.

22 **F. CDFA's Short-Term And Long-Term Eradication Strategies Are The Same And**
23 **Are Both Subject To CEQA Review**

24 In an apparent effort to explain why it is conducting an EIR while at the same time stating
25 that its actions are not subject to CEQA, CDFA attempts to distinguish between its alleged "short-
26 term" eradication strategy, which is allegedly not subject to CEQA, and its long-term strategy, which
27 CDFA concedes is subject to ultimate certification of an EIR. (Opp. at 12:5-12.) Nothing in the
28 administrative record distinguishes between the two strategies or states that aerial spraying is not

1 expected to be a part of both strategies. It is undisputed that CDFA intends to aerial spray pesticides
2 over Santa Cruz County for years. The fact that CDFA apparently thinks of this as "short-term" is
3 meaningless. CDFA's efforts would be better spent explaining why it has been unable, *in 15*
4 *months*, to complete even a draft EIR concerning the aerial spraying, despite its position that the
5 LBAM infestation is an "emergency" requiring "immediate action."

6 CDFA relies on the case of *Californians for Alternatives to Toxics v. Department of Food*
7 *and Agriculture* (2005) 136 Cal.App.4th 1, in order to support its argument that it can be legitimate
8 to use an emergency exemption and conduct environmental review at the same time (the Court
9 should note that Petitioners are not arguing the contrary, just arguing that CDFA's actions are not
10 legitimate *in this case*). Again, CDFA is relying on a case that is not helpful to it. *Californians for*
11 *Alternatives to Toxics* contains one sentence, in the factual background section, relating to CDFA's
12 reliance on an emergency exemption: "Because the emergency regulations and program were
13 created in response to an emergency, they were exempt from CEQA." (*Id.* at 7.) There is no
14 indication from the appellate opinion that the emergency exemption was challenged or that the court
15 evaluated the validity of the claim of an emergency exemption. To that extent, the sentence should
16 be considered dicta and disregarded.

17 In fact, a close reading of the case indicates that the court condemned exactly what CDFA
18 did in this case before it sprayed Santa Cruz in November 2007 as well as what it is continuing to do.
19 The central holding of the case is that CDFA could not forego analysis under CEQA relating to the
20 use of pesticide products by relying on the certified regulatory and registration program operated by
21 the California Department of Pesticide Regulation ("DPR"). The appellate court specifically
22 condemned CDFA's reliance on DPR and struck down CDFA's EIR because DPR's regulatory
23 program did not deal with the "specific uses of pesticides in the program, such as the specific
24 chemicals used, their amounts and frequency of use, specific sensitive areas targeted for application
25 and the like" and therefore CDFA could not rely on it. (136 Cal.App.4th at 16.) The Court
26 specifically explained that CDFA's error in relying on DPR infected the analysis of the impact from
27 exposure to pesticides on people in nonagricultural areas. (*Id.* at 16-20.) If anything, the
28 *Californians for Alternative to Toxics* case stands for the proposition that CEQA does not allow

1 CDFA to take the approach that it is taking with regard to this aerial spraying program, i.e. CDFA
2 cannot legitimately rely on DPR and US EPA to say that Checkmate is safe and therefore that no
3 further analysis is necessary as to its effects on human health and the environment.

4 Petitioners concede that the Legislature has delegated to the Secretary of CDFA the authority
5 to declare emergencies and conduct emergency eradication projects, but submit that the argument is
6 irrelevant because it has nothing to do with whether the Legislature *has given the Secretary the*
7 *discretion to evade CEQA where the factual predicates for a statutory exemption do not exist.* The
8 Legislature has clearly not given CDFA the authority to violate CEQA. Where CDFA violates
9 CEQA, an aerial spray program can be, and should be, shut down. (*See, e.g., Citizens for Non-Toxic*
10 *Pest Control v. Department of Food and Agriculture* (1986) 187 Cal.App.3d 1575 [CDFA
11 improperly determined that statewide spraying activity relating to the maggot fruit fly was exempt
12 from CEQA as a ministerial activity; an EIR was required].)

13 This debate cannot possibly come down to this -- relying on unsupportable distinctions
14 between short-term and long-term strategies and the Secretary's ability to take "emergency actions"
15 outside the context of CEQA is little more than meaningless wordplay. The administrative record in
16 this case is 50 volumes, roughly 35 of which are primarily dedicated to documenting, in pain-staking
17 detail, the identification of every LBAM trapped in 2007. The rest of the record only supports the
18 idea that CDFA has been responding to political pressure to "do something" to prevent potential
19 economic impact. The fundamental issue here is whether CDFA has demonstrated, with substantial
20 evidence, the existence of each element supporting use of the emergency exemption. Has CDFA
21 demonstrated that the LBAM infestation was a "sudden, unexpected occurrence, involving a clear
22 and imminent danger, demanding immediate action"? Petitioners submit that CDFA has failed to do
23 so, in every respect.

24 CONCLUSION

25 After all the dust has settled, CDFA is relying on an extremely weak record to justify a
26 conclusion that is simply unsupportable. If the LBAM infestation qualifies for the emergency
27 exemption, what would not qualify for it? Although it may be inconvenient, the State is not
28 exempt from the law. CDFA is engaging in a long-term eradication project, aerially spraying

1 urban populations with untested pesticides, despite the fact that there has been no damage to
2 property or the environment recorded since the pest was discovered. CDFA must comply with
3 CEQA before continuing its aerial spraying program. For all of the reasons stated herein, the
4 County and City request that this Court issue an order requiring CDFA to withdraw the October
5 2007 NOE and refrain from aerial spraying until it complies with CEQA.

6 Dated: April 16, 2008

7 DANA McRAE, COUNTY COUNSEL

ATCHISON, BARISONE, CONDOTTI &
KOVACEVICH

9 By: 

10 JASON M. HEATH
11 Assistant County Counsel
12 Attorneys for Petitioner/Plaintiff
COUNTY OF SANTA CRUZ

By: 

JOHN G. BARISONE
City Attorney
Attorneys for Petitioner/Plaintiff
CITY OF SANTA CRUZ

1 **PROOF OF SERVICE**

2 I, the undersigned, state that I am a citizen of the United States and employed in the County
3 of Santa Cruz, State of California. I am over the age of 18 years and not a party to the within action.
4 My business address is 701 Ocean Street, Room 505, Santa Cruz, California 95060. On the date set
5 out below, I served a true copy of the following on the person(s)/entity(ies) listed below:

6 **PETITIONERS' REPLY BRIEF IN SUPPORT OF THEIR PETITION FOR WRIT OF**
7 **MANDATE**

8 ☐ by **service by mail** by placing said copy enclosed in a sealed envelope and placing the envelope
9 for collection and mailing on the date and at the place shown below following our ordinary business
10 practices. I am readily familiar with this business's practice for collecting and processing
11 correspondence for mailing. On the same day that correspondence is placed for collection and
12 mailing, it is deposited in the ordinary course of business with the United States Postal Service with
13 postage fully prepaid.

14 ☐ by **personal service** at a.m./p.m. at _____.

15 ☒ by **express or overnight mail** by depositing a copy in a post office, mailbox, sub-post office,
16 substation, mail chute, or other like facility regularly maintained by the United States Postal Service
17 for receipt of express mail or a mailbox, mail chute, or other like facility regularly maintained by an
18 overnight mail company, in a sealed envelope, with express mail postage paid addressed to the
19 below listed person(s).

20 ☐ by **express or overnight mail** by arranging for pick-up by an employee of an express/overnight
21 mail company on:

22 ☒ by **facsimile service** at the number listed below and have confirmation that it was received by:

23 William Jenkins, Esq.

(Attorneys for Defendant/Respondent)

24 Anita Ruud, Esq.

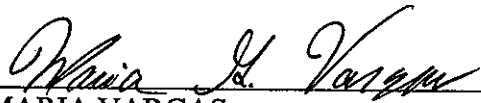
25 Deputy Attorneys General

26 455 Golden Gate Ave., Suite 11000

27 San Francisco, CA 94102-7004

28 (facsimile number 415-703-5480)

29 I declare under penalty of perjury that the foregoing is true and correct. Executed on April
30 17, 2008, at Santa Cruz, California.

31 
32 MARIA VARGAS

BILL NUMBER: SB 556 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add ~~Section 8546.10 to the Government Code,~~
~~relating to the State Auditor.~~ Article 10 (commencing
with Section 6049.5) to Chapter 9 of Part 1 of Division 4
of the Food and Agricultural Code, relating to the Light Brown Apple
Moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Wiggins. ~~State Auditor; Veterans'~~
~~Home of California.~~ The Light Brown Apple Moth.

Existing law provides for the control and abatement of plant
pests.

This bill would make various findings and declarations relating to
the Light Brown Apple Moth. This bill would create the Light Brown
Apple Moth Advisory Task Force to advise the Secretary of the
Department of Food and Agriculture on the environmental and economic
impact of the potential spread of the Light Brown Apple Moth in
California on or before September 1, 2007. This bill would provide
that appointments to the task force would be made by the secretary.

This bill would declare that it is to take effect immediately as
an urgency measure.

~~Existing law provides for the establishment and operation of the~~
~~Veterans' Home of California at various sites for aged and disabled~~
~~veterans who meet certain eligibility requirements.~~

~~The bill would require the State Auditor to conduct an audit of~~
~~the Veterans' Home of California, Yountville, to verify compliance~~
~~with the Americans with Disabilities Act of 1990.~~

Vote: ~~majority~~ 2/3 . Appropriation:
no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and
declares all of the following:

(a) On March 22, 2007, the U.S. Department of Agriculture's Animal
and Plant Health Inspection Service (APHIS) confirmed the presence
of Light Brown Apple Moth (LBAM), *Epiphyas posvittan*, in California.

(b) Since then, the presence of this invasive species has been
detected in portions of Alameda, Contra Costa, Marin, San Francisco,
San Mateo, Santa Clara, Santa Cruz, and Monterey Counties.

EXHIBIT A, Page 1 of 19

(c) This moth is originally from Australia, and has become established in New Zealand, New Caledonia, Hawaii, and the British Isles. Its discovery in California is a new North American record.

(d) The presence of the Light Brown Apple Moth has been recorded in over 200 plants in 120 plant genera in 50 families. Notable trees are apple, pear, peach, apricot, nectarine, citrus, persimmon, cherry, almond, avocado, oak, willow, walnut, poplar, cottonwood, coast redwood, pine, and eucalyptus. Common shrub and herbaceous hosts are grape, kiwifruit, strawberry, blackberry, blueberry, boysenberry, raspberry, corn, pepper, tomato, pumpkin, beans, cabbage, carrot, alfalfa, rose, camellia, jasmine, chrysanthemum, clover, and plantain.

(e) Development of the Light Brown Apple Moth is continuous, with no true dormancy. In Australia, this moth typically has three generations per year and over-winters as a larva. Adults deposit egg masses containing 20-50 eggs on the upper leaf surface or on fruit. Larvae disburse and construct silken shelters on the undersides of leaves, usually near a midrib or large vein. Older larva roll together leaves and buds or fruit with webbing.

(f) Damage to fruit occurs as surface feeding by the larva. Pupation takes place within the larval nests. The pest destroys, stunts, or deforms, young seedlings, spoils the appearance of ornamental plants, and injures deciduous fruit-tree crops, citrus, and grapes.

(g) California is the nation's leader in agricultural exports and in 2003 shipped more than \$7.2 billion in both food and agricultural commodities around the world.

(h) The Light Brown Apple Moth has the potential to cause significant economic losses due to increased production costs and the possible loss of international and domestic markets.

SEC. 2. Article 10 (commencing with Section 6049.5) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

6049.5. (a) The Light Brown Apple Moth Advisory Task Force is hereby created. The task force shall advise the Secretary of the Department of Food and Agriculture on the environmental and economic impact of the potential spread of the Light Brown Apple Moth in California.

(b) The task force shall report its findings to the secretary on or before September 1, 2007.

(c) Appointments to the task force shall be made by the Secretary of the Department of Food and Agriculture.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Light Brown Apple Moth is a new exotic pest that is not yet established in the United States. In order that swift action to assess its potential impact on the environmental and economic health of California can be taken as soon as possible, it is necessary that this act take effect immediately.

~~SECTION 1. Section 8546.10 is added to the Government Code, to read:~~

~~9546.10. The State Auditor shall conduct an audit of the Veterans' Home of California, Yountville, to verify compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).~~

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BILL NUMBER: SB 556 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add and repeal Article 10 (commencing with Section ~~6049.5~~ 6050) to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to the Light Brown Apple Moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Wiggins. The Light Brown Apple Moth. Existing law provides for the control and abatement of plant pests.

This bill, the Light Brown Apple Moth Act of 2007, would make various findings and declarations relating to the ~~Light Brown Apple Moth~~ agricultural pest. This bill would create the Light Brown Apple Moth ~~Advisory Task Force to advise the Secretary of~~ Program in the Department of Food and Agriculture ~~on the environmental and economic impact of the potential spread of the Light Brown Apple Moth in California on or before September 1, 2007. This bill would provide that appointments to the task force would be made by the secretary~~ and the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund. This bill would require the department to report to the Legislature on January 10, 2008, and on each January 10th thereafter while these provisions are operative, regarding its expenditures, progress, and ongoing priorities in combating the Light Brown Apple Moth in California. This bill would provide that these provisions would become inoperative on March 1, 2018, and as of January 1, 2019, would be repealed unless a later enacted statute extends that date.

This bill would declare that it is to take effect immediately as an urgency measure.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Light Brown Apple Moth Act of 2007.

SEC. 2 Article 10 (commencing with Section 6050) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

EXHIBIT A, Page 4 of 19

6050. The Legislature hereby finds and declares all of the following:

(a) The introduction of the Light Brown Apple Moth represents a clear, present, significant, and imminent danger to California's natural environment and agricultural industry. This is an insect species that feeds on over 250 species of native and ornamental plants, fruits, and vegetables.

(b) The introduction of the Light Brown Apple Moth also represents a clear, present, significant, and imminent threat to California's native areas as it will feed on alder, ceanothus, columbine, cottonwood, cypress, ferns, fir, hawthorn, honeysuckle, lupine, madrone, oak, pine, poplar, redwood, spruce, and willow.

(c) The general area of the infestation contains numerous sensitive plant and animal species and habits. There is an imminent threat for adverse effect and ultimate extinction to some of these sensitive species if this pest becomes permanently established in California.

(d) The State of California has a great interest in protecting its native species and agricultural products from further harm caused by the introduction of the Light Brown Apple Moth.

(e) The Light Brown Apple Moth is currently found in the urban and natural areas in all parts of nine California counties and could move into agricultural croplands.

(f) Valued at \$31.7 billion in 2005, California's agricultural economy continues to rank first in the nation constituting 13.3 percent of the total United States agricultural economy value in 2005. It is estimated to have a minimum potential impact of \$133 million to only four of the potentially impacted crops, apples, pears, oranges, and grapes, and environmental impact from increased pesticide use.

(g) To avoid potentially catastrophic loss to some of California's most important industries and to native species, the Legislature declares that this article is in the interest of the public health and welfare.

(h) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to plant pest eradication and control in this state.

6050.1. (a) There is hereby created in the Department of Food and Agriculture the Light Brown Apple Moth Program.

(b) The Secretary of Food and Agriculture shall provide an appropriate level of support staffing and logistical support for eradicating the Light Brown Apple Moth.

(c) (1) There is hereby created the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund.

(2) The account shall consist of money made available from the federal government and other sources or transferred from the General Fund. Money made available from the federal government and other sources shall be available for expenditure without regard to fiscal years for the purpose of eradicating the Light Brown Apple Moth.

(d) During the first 36 months of the operation of the Light Brown Apple Moth Program the department's actions pursuant to this act shall be deemed an emergency response for the benefit of the environment under Division 13 (commencing with Section 21000) of the Public Resources Code. During this period, the department shall complete the statutorily required environmental documentation.

(e) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 10, 2008, and on each January 10th thereafter while this section is operative, regarding its expenditures, progress, and ongoing priorities in combating the Light Brown Apple Moth in California.

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(f) This article shall become inoperative on March 1, 2018, and as of January 1, 2019, is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect, as soon as possible, the 250 host commodities, their associated industries, and native species from the Light Brown Apple Moth, it is necessary that this act take effect immediately.

~~SECTION 1. The Legislature hereby finds and declares all of the following:~~

~~(a) On March 22, 2007, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) confirmed the presence of Light Brown Apple Moth (LBAM), Epiphyas postvittana, in California.~~

~~(b) Since then, the presence of this invasive species has been detected in portions of Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Monterey Counties.~~

~~(c) This moth is originally from Australia, and has become established in New Zealand, New Caledonia, Hawaii, and the British Isles. Its discovery in California is a new North American record.~~

~~(d) The presence of the Light Brown Apple Moth has been recorded in over 200 plants in 120 plant genera in 50 families. Notable trees are apple, pear, peach, apricot, nectarine, citrus, persimmon, cherry, almond, avocado, oak, willow, walnut, poplar, cottonwood, coast redwood, pine, and eucalyptus. Common shrub and herbaceous hosts are grape, kiwifruit, strawberry, blackberry, blueberry, boysenberry, raspberry, corn, pepper, tomato, pumpkin, beans, cabbage, carrot, alfalfa, rose, camellia, jasmine, chrysanthemum, clover, and plantain.~~

~~(e) Development of the Light Brown Apple Moth is continuous, with no true dormancy. In Australia, this moth typically has three generations per year and over-winters as a larva. Adults deposit egg masses containing 20-50 eggs on the upper leaf surface or on fruit. Larvae disburse and construct silken shelters on the undersides of leaves, usually near a midrib or large vein. Older larva roll together leaves and buds or fruit with webbing.~~

~~(f) Damage to fruit occurs as surface feeding by the larva. Pupation takes place within the larval nests. The pest destroys, stunts, or deforms, young seedlings, spoils the appearance of ornamental plants, and injures deciduous fruit tree crops, citrus, and grapes.~~

~~(g) California is the nation's leader in agricultural exports and in 2003 shipped more than \$7.2 billion in both food and agricultural commodities around the world.~~

~~(h) The Light Brown Apple Moth has the potential to cause significant economic losses due to increased production costs and the possible loss of international and domestic markets.~~

~~SEC. 2. Article 10 (commencing with Section 6049.5) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:~~

~~Article 10. Light Brown Apple Moth~~

~~6049.5. (a) The Light Brown Apple Moth Advisory Task Force is~~

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~~hereby created. The task force shall advise the Secretary of the Department of Food and Agriculture on the environmental and economic impact of the potential spread of the Light Brown Apple Moth in California.~~

~~(b) The task force shall report its findings to the secretary on or before September 1, 2007.~~

~~(c) Appointments to the task force shall be made by the Secretary of the Department of Food and Agriculture.~~

~~SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~The Light Brown Apple Moth is a new exotic pest that is not yet established in the United States. In order that swift action to assess its potential impact on the environmental and economic health of California can be taken as soon as possible, it is necessary that this act take effect immediately.~~

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BILL NUMBER: SB 556 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JULY 2, 2007
AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add and repeal Article 10 (commencing with Section 6050) ~~to~~ of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to the light brown apple moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Wiggins. The light brown apple moth. Existing law provides for the control and abatement of plant pests.

This bill, the Light Brown Apple Moth Act of 2007, would make various findings and declarations relating to the agricultural pest. This bill would create the Light Brown Apple Moth Program in the Department of Food and Agriculture and the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund. This bill would require the department to report to the Legislature on January 10, 2008, and on each January 10th thereafter while these provisions are operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California. This bill would provide that these provisions would become inoperative on March 1, 2018, and as of January 1, 2019, would be repealed unless a later enacted statute extends that date.

This bill would declare that it is to take effect immediately as an urgency measure.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Light Brown Apple Moth Act of 2007.

SEC. 2 Article 10 (commencing with Section 6050) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

6050. The Legislature hereby finds and declares all of the following:

(a) The introduction of the light brown apple moth represents a clear, present, significant, and imminent danger to California's natural environment and agricultural industry. This is an insect species that feeds on over 250 species of native and ornamental

EXHIBIT A, Page 8 of 19

plants, fruits, and vegetables.

(b) The introduction of the light brown apple moth also represents a clear, present, significant, and imminent threat to California's native areas as it will feed on alder, ceanothus, columbine, cottonwood, cypress, ferns, fir, hawthorn, honeysuckle, lupine, madrone, oak, pine, poplar, redwood, spruce, and willow.

(c) The general area of the infestation contains numerous sensitive plant and animal species and habits. There is an imminent threat for adverse effect and ultimate extinction to some of these sensitive species if this pest becomes permanently established in California.

(d) The State of California has a great interest in protecting its native species and agricultural products from further harm caused by the introduction of the light brown apple moth.

(e) The light brown apple moth is currently found in the urban and natural areas in all parts of nine California counties and could move into agricultural croplands.

(f) Valued at \$31.7 billion in 2005, California's agricultural economy continues to rank first in the nation constituting 13.3 percent of the total United States agricultural economy value in 2005. It is estimated to have a minimum potential impact of \$133 million to only four of the potentially impacted crops, apples, pears, oranges, and grapes, and environmental impact from increased pesticide use.

(g) To avoid potentially catastrophic loss to some of California's most important industries and to native species, the Legislature declares that this article is in the interest of the public health and welfare.

(h) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to plant pest eradication and control in this state.

6050.1. (a) There is hereby created in the Department of Food and Agriculture the Light Brown Apple Moth Program.

(b) The Secretary of Food and Agriculture shall provide an appropriate level of support staffing and logistical support for eradicating the light brown apple moth.

(c) (1) There is hereby created the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund.

(2) The account shall consist of money made available from the federal government and other sources or transferred from the General Fund designated for the Light Brown Apple Moth Program. Money made available from the federal government and other sources shall be available for expenditure without regard to fiscal years for the purpose of eradicating the light brown apple moth.

(d) During the first ~~26~~ 24 months of the operation of the Light Brown Apple Moth Program the department's actions pursuant to this act shall be deemed an emergency response for the benefit of the environment under Division 13 (commencing with Section 21000) of the Public Resources Code. During this period, the department shall complete the statutorily required environmental documentation.

(e) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 10, 2008, and on each January 10th thereafter while this section is operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California.

(f) This article shall become inoperative on March 1, 2018, and as of January 1, 2019, is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date

SEC. 3. This act is an urgency statute necessary for the immediate

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preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect, as soon as possible, the 250 host ~~commodities~~ species of native and ornamental plants, fruits, and vegetables, their associated industries, and native species from the light brown apple moth, it is necessary that this act take effect immediately.

BILL NUMBER: SB 556 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY SEPTEMBER 4, 2007
AMENDED IN ASSEMBLY JULY 2, 2007
AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add and repeal Article 10 (commencing with Section 6050) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to the light brown apple moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, as amended, Wiggins. The light brown apple moth.

Existing law provides for the control and abatement of plant pests.

This bill, the Light Brown Apple Moth Act of 2007, would make various findings and declarations relating to the agricultural pest. This bill would create the Light Brown Apple Moth Program in the Department of Food and Agriculture and the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund, from which the department may allocate funds to local agencies for activities to eradicate the Light Brown Apple Moth. This bill would require the department to annually review the progress made by each local agency to which funds have been allocated and make recommendations, as needed, to improve individual local agency eradication efforts. This bill would also require the department to report to the Legislature on January 10, 2008, and on each January 10th thereafter while these provisions are operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California. This bill would provide that these provisions would become inoperative on ~~March 1, 2010~~ October 1, 2009, and as of January 1, ~~2010~~ 2010, would be repealed unless a later enacted statute extends that date.

This bill would declare that it is to take effect immediately as an urgency measure.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Light Brown Apple Moth Act of 2007.

~~SEC. 2~~ SEC. 2. Article 10 (commencing with Section 6050) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

EXHIBIT A, Page 11 of 19

6050. The Legislature hereby finds and declares all of the following:

(a) The introduction of the light brown apple moth represents a clear, present, significant, and imminent danger to California's natural environment and agricultural industry. This is an insect species that feeds on over 250 species of native and ornamental plants, fruits, and vegetables.

(b) The introduction of the light brown apple moth also represents a clear, present, significant, and imminent threat to California's native areas as it will feed on alder, ceanothus, columbine, cottonwood, cypress, ferns, fir, hawthorn, honeysuckle, lupine, madrone, oak, pine, poplar, redwood, spruce, and willow.

(c) The general area of the infestation contains numerous sensitive plant and animal species and ~~habits~~ habitats. There is an imminent threat for adverse effect and ultimate extinction to some of these sensitive species if this pest becomes permanently established in California.

(d) The State of California has a great interest in protecting its native species and agricultural products from further harm caused by the introduction of the light brown apple moth.

(e) The light brown apple moth is currently found in the urban and natural areas in all parts of nine California counties and could move into agricultural croplands.

(f) Valued at \$31.7 billion in 2005, California's agricultural economy continues to rank first in the nation constituting 13.3 percent of the total United States agricultural economy value in 2005. It is estimated to have a minimum potential impact of \$133 million to only four of the potentially impacted ~~crops,~~ ~~apples,~~ crops (apples, pears, oranges, and ~~grapes,~~ grapes) and environmental impact from increased pesticide use.

(g) To avoid potentially catastrophic loss to some of California's most important industries and to native species, the Legislature declares that this article is in the interest of the public health and welfare.

(h) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to plant pest eradication and control in this state.

6050.1. (a) There is hereby created in the Department of Food and Agriculture the Light Brown Apple Moth Program.

(b) The Secretary of Food and Agriculture shall provide, subject to available funding and other resources, an appropriate level of support staffing and logistical support for eradicating the light brown apple moth.

(c) (1) There is hereby created the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund.

~~(2) The account shall consist of money made available from the federal government and other sources or transferred from the General Fund designated for the Light Brown Apple Moth Program. Money made available from the federal government and other sources shall be available for expenditure without regard to fiscal years for the purpose of eradicating the light brown apple moth.~~

~~(d) During the first 24 months of the operation of the Light Brown Apple Moth Program the department's actions pursuant to this act shall be deemed an emergency response for the benefit of the environment under Division 13 (commencing with Section 21000) of the Public Resources Code. During this period, the department shall~~

~~complete the statutorily required environmental documentation.~~

(2) (A) The funds in the Light Brown Apple Moth Account shall be available for expenditure without regard to fiscal year for activities by local agencies to eradicate the Light Brown Apple Moth. Funds allocated by the department to a county for local assistance in eradicating the Light Brown Apple Moth shall be allocated to a local agency or local agencies designated by that county's board of supervisors.

(B) The department shall, for local agencies to which funds have been allocated pursuant to subparagraph (A), annually review the progress made by each local agency in eradicating the Light Brown Apple Moth, and make recommendations, as needed, to improve individual local agency eradication efforts.

(C) Eradication activities undertaken pursuant to this article shall comply with all applicable laws and regulations and shall be conducted in an environmentally responsible manner.

~~(d)~~

(d) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 10, 2008, and on each January 10th thereafter while this section is operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California.

~~(e)~~

(e) This article shall become inoperative on ~~March 1, 2010~~ October 1, 2009, and as of January 1, ~~2010~~ 2010, is repealed, unless a later enacted statute that is enacted before January 1, ~~2010~~ 2010, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect, as soon as possible, the 250 host species of native and ornamental plants, fruits, and vegetables, their associated industries, and native species from the light brown apple moth, it is necessary that this act take effect immediately.

BILL NUMBER: SB 556 ENROLLED
BILL TEXT

PASSED THE SENATE SEPTEMBER 7, 2007
PASSED THE ASSEMBLY SEPTEMBER 6, 2007
AMENDED IN ASSEMBLY SEPTEMBER 4, 2007
AMENDED IN ASSEMBLY JULY 2, 2007
AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add and repeal Article 10 (commencing with Section 6050) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to the light brown apple moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, Wiggins. The light brown apple moth.

Existing law provides for the control and abatement of plant pests.

This bill, the Light Brown Apple Moth Act of 2007, would make various findings and declarations relating to the agricultural pest. This bill would create the Light Brown Apple Moth Program in the Department of Food and Agriculture and the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund, from which the department may allocate funds to local agencies for activities to eradicate the Light Brown Apple Moth. This bill would require the department to annually review the progress made by each local agency to which funds have been allocated and make recommendations, as needed, to improve individual local agency eradication efforts. This bill would also require the department to report to the Legislature on January 10, 2008, and on each January 10th thereafter while these provisions are operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California. This bill would provide that these provisions would become inoperative on October 1, 2009, and as of January 1, 2010, would be repealed unless a later enacted statute extends that date.

This bill would declare that it is to take effect immediately as an urgency measure.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Light Brown Apple Moth Act of 2007.

SEC. 2. Article 10 (commencing with Section 6050) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

6050. The Legislature hereby finds and declares all of the

EXHIBIT A, Page 14 of 19

following:

(a) The introduction of the light brown apple moth represents a clear, present, significant, and imminent danger to California's natural environment and agricultural industry. This is an insect species that feeds on over 250 species of native and ornamental plants, fruits, and vegetables.

(b) The introduction of the light brown apple moth also represents a clear, present, significant, and imminent threat to California's native areas as it will feed on alder, ceanothus, columbine, cottonwood, cypress, ferns, fir, hawthorn, honeysuckle, lupine, madrone, oak, pine, poplar, redwood, spruce, and willow.

(c) The general area of the infestation contains numerous sensitive plant and animal species and habitats. There is an imminent threat for adverse effect and ultimate extinction to some of these sensitive species if this pest becomes permanently established in California.

(d) The State of California has a great interest in protecting its native species and agricultural products from further harm caused by the introduction of the light brown apple moth.

(e) The light brown apple moth is currently found in the urban and natural areas in all parts of nine California counties and could move into agricultural croplands.

(f) Valued at \$31.7 billion in 2005, California's agricultural economy continues to rank first in the nation constituting 13.3 percent of the total United States agricultural economy value in 2005. It is estimated to have a minimum potential impact of \$133 million to only four of the potentially impacted crops (apples, pears, oranges, and grapes) and environmental impact from increased pesticide use.

(g) To avoid potentially catastrophic loss to some of California's most important industries and to native species, the Legislature declares that this article is in the interest of the public health and welfare.

(h) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to plant pest eradication and control in this state.

6050.1. (a) There is hereby created in the Department of Food and Agriculture the Light Brown Apple Moth Program.

(b) The Secretary of Food and Agriculture shall provide, subject to available funding and other resources, an appropriate level of support staffing and logistical support for eradicating the light brown apple moth.

(c) (1) There is hereby created the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund.

(2) (A) The funds in the Light Brown Apple Moth Account shall be available for expenditure without regard to fiscal year for activities by local agencies to eradicate the Light Brown Apple Moth. Funds allocated by the department to a county for local assistance in eradicating the Light Brown Apple Moth shall be allocated to a local agency or local agencies designated by that county's board of supervisors.

(B) The department shall, for local agencies to which funds have been allocated pursuant to subparagraph (A), annually review the progress made by each local agency in eradicating the Light Brown Apple Moth, and make recommendations, as needed, to improve individual local agency eradication efforts.

(C) Eradication activities undertaken pursuant to this article shall comply with all applicable laws and regulations and shall be conducted in an environmentally responsible manner.

(d) Notwithstanding Section 7550.5 of the Government Code, the

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department shall report to the Legislature on January 10, 2008, and on each January 10th thereafter while this section is operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California.

(e) This article shall become inoperative on October 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect, as soon as possible, the 250 host species of native and ornamental plants, fruits, and vegetables, their associated industries, and native species from the light brown apple moth, it is necessary that this act take effect immediately.

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BILL NUMBER: SB 556 CHAPTERED
BILL TEXT

CHAPTER 190

FILED WITH SECRETARY OF STATE SEPTEMBER 7, 2007
APPROVED BY GOVERNOR SEPTEMBER 7, 2007
PASSED THE SENATE SEPTEMBER 7, 2007
PASSED THE ASSEMBLY SEPTEMBER 6, 2007
AMENDED IN ASSEMBLY SEPTEMBER 4, 2007
AMENDED IN ASSEMBLY JULY 2, 2007
AMENDED IN ASSEMBLY JUNE 21, 2007
AMENDED IN SENATE MAY 9, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Wiggins

FEBRUARY 22, 2007

An act to add and repeal Article 10 (commencing with Section 6050) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, relating to the light brown apple moth, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 556, Wiggins. The light brown apple moth.

Existing law provides for the control and abatement of plant pests.

This bill, the Light Brown Apple Moth Act of 2007, would make various findings and declarations relating to the agricultural pest. This bill would create the Light Brown Apple Moth Program in the Department of Food and Agriculture and the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund, from which the department may allocate funds to local agencies for activities to eradicate the Light Brown Apple Moth. This bill would require the department to annually review the progress made by each local agency to which funds have been allocated and make recommendations, as needed, to improve individual local agency eradication efforts. This bill would also require the department to report to the Legislature on January 10, 2008, and on each January 10th thereafter while these provisions are operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California. This bill would provide that these provisions would become inoperative on October 1, 2009, and as of January 1, 2010, would be repealed unless a later enacted statute extends that date.

This bill would declare that it is to take effect immediately as an urgency measure.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known as the Light Brown Apple Moth Act of 2007.

SEC. 2. Article 10 (commencing with Section 6050) is added to Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code, to read:

Article 10. Light Brown Apple Moth

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6050. The Legislature hereby finds and declares all of the following:

(a) The introduction of the light brown apple moth represents a clear, present, significant, and imminent danger to California's natural environment and agricultural industry. This is an insect species that feeds on over 250 species of native and ornamental plants, fruits, and vegetables.

(b) The introduction of the light brown apple moth also represents a clear, present, significant, and imminent threat to California's native areas as it will feed on alder, ceanothus, columbine, cottonwood, cypress, ferns, fir, hawthorn, honeysuckle, lupine, madrone, oak, pine, poplar, redwood, spruce, and willow.

(c) The general area of the infestation contains numerous sensitive plant and animal species and habitats. There is an imminent threat for adverse effect and ultimate extinction to some of these sensitive species if this pest becomes permanently established in California.

(d) The State of California has a great interest in protecting its native species and agricultural products from further harm caused by the introduction of the light brown apple moth.

(e) The light brown apple moth is currently found in the urban and natural areas in all parts of nine California counties and could move into agricultural croplands.

(f) Valued at \$31.7 billion in 2005, California's agricultural economy continues to rank first in the nation constituting 13.3 percent of the total United States agricultural economy value in 2005. It is estimated to have a minimum potential impact of \$133 million to only four of the potentially impacted crops (apples, pears, oranges, and grapes) and environmental impact from increased pesticide use.

(g) To avoid potentially catastrophic loss to some of California's most important industries and to native species, the Legislature declares that this article is in the interest of the public health and welfare.

(h) This article is not intended to establish a precedent, or to supersede, reduce, or in any way alter government funding related to plant pest eradication and control in this state.

6050.1. (a) There is hereby created in the Department of Food and Agriculture the Light Brown Apple Moth Program.

(b) The Secretary of Food and Agriculture shall provide, subject to available funding and other resources, an appropriate level of support staffing and logistical support for eradicating the light brown apple moth.

(c) (1) There is hereby created the Light Brown Apple Moth Account in the Department of Food and Agriculture Fund.

(2) (A) The funds in the Light Brown Apple Moth Account shall be available for expenditure without regard to fiscal year for activities by local agencies to eradicate the Light Brown Apple Moth. Funds allocated by the department to a county for local assistance in eradicating the Light Brown Apple Moth shall be allocated to a local agency or local agencies designated by that county's board of supervisors.

(B) The department shall, for local agencies to which funds have been allocated pursuant to subparagraph (A), annually review the progress made by each local agency in eradicating the Light Brown Apple Moth, and make recommendations, as needed, to improve individual local agency eradication efforts.

(C) Eradication activities undertaken pursuant to this article

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shall comply with all applicable laws and regulations and shall be conducted in an environmentally responsible manner.

(d) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 10, 2008, and on each January 10th thereafter while this section is operative, regarding its expenditures, progress, and ongoing priorities in combating the light brown apple moth in California.

(e) This article shall become inoperative on October 1, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect, as soon as possible, the 250 host species of native and ornamental plants, fruits, and vegetables, their associated industries, and native species from the light brown apple moth, it is necessary that this act take effect immediately.